

POLICY ON INTELLECTUAL PROPERTY

Consultation Draft

Mar 1, 2017

Principles:

Consistent with the Memorial University of Newfoundland (the "University") Statement of Vision, Mission and Values, the University supports the following principles associated with Intellectual Property created by Members of the University:

- (1) Members must have the freedom to pursue their teaching, scholarly and research activities based on their individual and collective intelligence, curiosity, inventiveness, and creativity.
- (2) Subject to the terms of Agreements, the Creators of Intellectual Property should own their Intellectual Property and should be beneficiaries of commercialization and other exploitation of their Intellectual Property.
- (3) Given that all of Memorial's activities are to some significant extent publicly funded or subsidized, the Creators of Intellectual Property must have the ability to publish and present their research results in the public domain in order to contribute to the body of public knowledge in their disciplines.
- (4) Given that all of Memorial's activities are to some significant extent publicly funded or subsidized, all Intellectual Property developed under the auspices of Memorial must remain available at no cost to Memorial for its future research, teaching and educational activities.
- (5) Reflecting its special obligation to the people of Newfoundland and Labrador, the transfer and commercialization of Intellectual Property developed at Memorial should also benefit the province and society at large.
- (6) The Intellectual Property Rights of others must be respected, including the rights of Members, the University and its obligations to third parties, and the rights of others who have contributed to the development Intellectual Property.
- (7) The transfer and commercialization of Intellectual Property represents an important form of dissemination that complements other more traditional forms of dissemination, such as scholarly publications or presentations.
- (8) Members pursuing opportunities to transfer and commercialize their Intellectual Property independent of the University must ensure that the

University's Direct and Indirect Costs associated with the creation of such Intellectual Property are covered. It is recognized that the Direct and Indirect Costs associated with the creation of specific Intellectual Property may be covered through a combination of base funding provided to the University by government, and through specific grants or contracts provided to the University by government, external organizations and/or the private sector.

(9) Members may, based on Informed Consent, choose to participate in work that is subject to Agreements that place constraints on how their Intellectual Property may be disseminated or subsequently used.

Purpose:

To clarify the rights to Intellectual Property that is created or developed by Members of the University and the obligations of Members to the University, third parties and other Members with respect to the transfer and commercialization of such Intellectual Property.

Scope:

All Members of the University and all forms of Intellectual Property developed by its Members.

Definitions:

Assignment - a partial or full assignment of Intellectual Property Rights to any party or a grant to any party of contingent or future right(s) to receive an assignment of any Intellectual Property Rights (such as an option or right of first refusal).

Agreement - an agreement that includes terms or conditions respecting Intellectual Property or Intellectual Property Rights, including the rights of third parties.

Creator - the Member(s) who creates, designs, discovers, invents or authors Intellectual Property.

Data - the recorded factual material commonly accepted in the scientific or academic community as necessary to support the University's research activities or validate research findings.

Direct Costs - include, but are not limited to, the stipends, salaries and benefits for

research personnel, including faculty, staff, postdoctoral trainees and students, materials and supplies, travel, equipment, purchase of specialized services, and subcontracts.

Indirect Costs - include, but are not limited to, building use and depreciation, utilities, equipment depreciation, physical plant and maintenance (including utilities, hazardous waste disposal, security), insurance, pre- and post-award research administration, financial administration (including purchasing and accounting), human resources administration, and common resources, including libraries and computing services. The Indirect Costs shall be charged in accordance with the policy on **Indirect Costs of Externally Funded Research** (<http://www.mun.ca/policy/site/policy.php?id=135>).

Informed Consent - consent given by an individual who has received the information necessary to allow a considered judgment and has been given a reasonable opportunity to consider such information without having been subject to coercion, undue influence, inducement or intimidation. The process to be followed for obtaining the Informed Consent of a Member who is a graduate student or postdoctoral fellow shall be as established by the Dean of the School of Graduate Studies or delegate. The process to be followed for obtaining the Informed Consent of a Member who is an undergraduate student shall be as established by the Provost or delegate. The process to be followed for obtaining the Informed Consent of all other Members shall be as established by the Administrative Head(s) for the Member(s). In the case of Research, the process for obtaining Informed Consent shall also be approved by the Vice-President (Research), or delegate.

Intellectual Property - any result or outcome of intellectual, industrial, scientific, literary or artistic activity and includes but is not limited to Works, Data, Tangible Results, Inventions, industrial or artistic designs, trade-marks, trade names, domain names, integrated circuit topographies, know-how and trade secrets.

Intellectual Property Rights - any and all proprietary rights, anywhere in the world, in Intellectual Property, whether such rights are statutory or otherwise, and includes without limitation rights in the expression or use of such Intellectual Property.

Inventions - potentially patentable ideas, discoveries, creations or know-how.

License - a grant of Intellectual Property Rights to any party and includes without limitation a grant of contingent or future right(s) to receive a license or sublicense of any Intellectual Property Rights (such as an option or right of first refusal) but does not include an Assignment.

Member - an individual conducting University Activities, paid or unpaid, and includes but is not limited to faculty, staff, students, academic administrators, sessional lecturers, postdoctoral fellows, professors emeriti, volunteers, adjunct faculty, honorary research professors and, unless an Agreement specifies otherwise, visiting scientists and visiting students.

Moral Rights – as defined by the *Copyright Act*, R.S.C. 1985, c. C-42, as amended or replaced from time to time.

Personal Health Information - “personal health information” as defined in the *Personal Health Information Act*, SNL 2008, c. P-7.01, as amended or replaced from time to time.

Principal Investigator - the Member who has consented to assume, alone or with another Member(s), primary responsibility for the design, conduct and supervision of a Research project.

Research - any disciplined enquiry or systematic investigation intended to extend knowledge or to establish facts or principles. It does not include, when undertaken for the University’s internal assessment, management or improvement purposes (“Internal Assessment”), quality assurance and quality improvement studies, program evaluation activities and performance reviews, or testing within normal educational requirements. For greater certainty, where data is collected for Internal Assessment but later used for Research purposes, such secondary use of the Internal Assessment data constitutes Research.

Tangible Results - the tangible embodiment of the outcomes of Research including without limitation biological materials, physical devices, plant germplasm, cell lines, organisms, proteins, plasmids, DNA/RNA, chemical compounds, transgenic animals and other materials useful for research or commercial purposes.

Transfer - a License or Assignment of Intellectual Property or Intellectual Property Rights or any part thereof.

University Activities - activities carried on by a Member in the course of their employment or association with the University, or using University funds, facilities, equipment or other resources.

Works - anything that can be the subject of copyright protection and includes without limitation original literary, dramatic, musical and artistic works.

Policy:

1.0 Ownership

1.1 Creators shall own the Intellectual Property Rights in their Intellectual Property subject to the remainder of this Article.

1.2 Where Collective Agreements, employment contracts or official admission letters from the University to students or postdoctoral fellows include language related to Intellectual Property that conflicts with this Policy, the language of a Collective

Agreement, employment contract or offer of admission shall apply for the Members subject to that Collective Agreement, employment contract or admission letter.

1.3 The University solely owns all Intellectual Property Rights in Intellectual Property created by staff hired to provide administrative, scientific, or technical support for University Activities. In the case of Intellectual Property developed by such staff during the course of Research, the University will assign to the Creator(s) of such Intellectual Property those Intellectual Property Rights that the University does not need to retain to meet its obligations under Agreements and that the Creator(s) would be entitled to own if this section did not apply. Such assignment shall occur as soon as practicable upon receipt by the University of a written request from the Creator(s) and shall be subject to the rights retained by the University pursuant to section 1.6.

1.4 Where an Agreement contains a License or Assignment by the University, the University solely owns all Intellectual Property Rights that are the subject of such License or Assignment. The University will assign to the Creator(s) of such Intellectual Property those Intellectual Property Rights that the University does not need to retain to meet its obligations under that or any other Agreement and that the Creator(s) would be entitled to own if this section did not apply. Such assignment shall occur as soon as practicable upon receipt by the Vice-President (Research), or delegate, of a written request from the Creator(s) and shall be subject to the rights retained by the University pursuant to section 1.6.

1.5 Where the University specifically commissions the creation of Intellectual Property, it solely owns the Intellectual Property Rights in that Intellectual Property.

1.6 The University retains a fully paid-up, perpetual, non-exclusive, royalty-free right to use all Intellectual Property created by its Members for non-commercial research, teaching and educational purposes of the University and its Members; however, the rights granted to the University pursuant to this section 1.6 do not extend to any Personal Health Information. The use of Intellectual Property is subject to applicable laws and ethical requirements and may not violate the rights of any third party.

1.7 Intellectual property and records created by an academic administrator in relation to the administrative responsibilities of the position are the property of the University and therefore must remain with the unit when the term of the administrative appointment ends.

1.8 In the event of the death of a Member, his or her rights under this Policy shall revert to the estate or succession of the Member.

1.9 Except as may be provided under an Agreement, Members shall retain Moral Rights to their Intellectual Property. A Member may waive his or her Moral Rights in writing in favour of the University or any other party.

2.0 Research Agreements

2.1 Where Research is subject to an Agreement signed by the University, the Principal Investigator(s) of such Research shall not permit any Member to participate in the Research without first ensuring that the Member has given Informed Consent to participate in the Research in accordance with the terms of the Agreement.

2.2 The University reserves the right to enter into Agreements that provide for defined financial benefits for the Creators of Intellectual Property, benefits of access to the Intellectual Property by third parties, and the recovery of Direct and Indirect Costs by the University that are not otherwise covered through funding to the University. The principles of such Agreements are described in the [Procedure for Transfer and Commercialization of Intellectual Property](http://www.mun.ca/research/about/IP_Procedures_Mar_1.pdf) (http://www.mun.ca/research/about/IP_Procedures_Mar_1.pdf).

2.3 All Agreements that pertain to Research must be broadly consistent with the [NSERC Policy on Intellectual Property](http://www.nserc-crsng.gc.ca/NSERC-CRSNG/Politiques-Politiques/ip-pi_eng.asp) (http://www.nserc-crsng.gc.ca/NSERC-CRSNG/Politiques-Politiques/ip-pi_eng.asp) and allow for dissemination and publication of the Members' Research results in the scholarly literature although such dissemination and publication may be subject to an appropriate deferral period in which a review of proposed publications can be carried out to identify confidential or commercially sensitive information and to provide time to secure protection of such information.

2.4 Under exceptional circumstances, as determined by the Vice-President (Research) or delegate, an Agreement may vary from the principles set out in this Policy.

3.0 Modification of Intellectual Property Rights

3.1 Every Member will respect the Intellectual Property Rights and contributions of other Members and the Intellectual Property Rights of third parties.

3.2 Subject to the remainder of this Article, any Transfer of Intellectual Property Rights by one or more owners of those Intellectual Property Rights requires the prior Informed Consent of all owners of the Intellectual Property Rights and the prior written consent of the Vice-President (Research) or delegate. All Members shall adhere to the [Procedure for Transfer and Commercialization of Intellectual Property](http://www.mun.ca/research/about/IP_Procedures_Mar_1.pdf) (http://www.mun.ca/research/about/IP_Procedures_Mar_1.pdf).

3.3 Any Transfer of Intellectual Property Rights shall be in accordance with the University's [Conflict of Interest Policy](http://www.mun.ca/policy/site/policy.php?id=180) (<http://www.mun.ca/policy/site/policy.php?id=180>).

3.4 Subject to the terms or conditions of an applicable Agreement and any ethical or legal requirements, Creators of Intellectual Property shall be free to publish and/or present that Intellectual Property in academic journals and other vehicles of scholarly dissemination and to assign or license copyright in any academic Work to academic journals and other vehicles of scholarly dissemination. Scholarly dissemination of research results shall comply with the principles discussed in the [Tri-Agency Framework: Responsible Conduct of Research \(2016\)](#) (<http://www.rcr.ethics.gc.ca/eng/policy-politique/framework-cadre/#2>). Consideration should also be given to accepted practices that may exist within the corresponding academic discipline with respect to authorship and acknowledgement of the contributions by others.

Procedures:

[Procedure for the Transfer and Commercialization of Intellectual Property \(http://www.mun.ca/research/about/IP_Procedures_Mar_1.pdf\)](http://www.mun.ca/research/about/IP_Procedures_Mar_1.pdf)

Related Documents:

Vision, Mission and Values
(<https://www.mun.ca/president/home/vision.php>)

MUNFA Collective agreement
(<http://www.mun.ca/munfa/CA2014-2017.pdf>)

TAUMUN Collective Agreement
([http://www.mun.ca/taumun/collective_agreement/TAUMUN C.A. 2014 for Web.pdf](http://www.mun.ca/taumun/collective_agreement/TAUMUN_C.A._2014_for_Web.pdf))

LUMUN Collective Agreement (on behalf of Per Course Instructors)
([http://www.mun.ca/lumun/instructors/collective_agreement/LUMUN PCI CA 2014-2016 LINKS.pdf](http://www.mun.ca/lumun/instructors/collective_agreement/LUMUN_PCI_CA_2014-2016_LINKS.pdf))

LUMUN Collective Agreement (on behalf of Postdoctoral Fellows)
([http://www.mun.ca/lumun/postdocs/collective_agreement_pdfs/PDF CA 10 JAN 2014.pdf](http://www.mun.ca/lumun/postdocs/collective_agreement_pdfs/PDF_CA_10_JAN_2014.pdf))

Procedures for the Transfer and Commercialization of Intellectual Property
(http://www.mun.ca/research/about/IP_Procedures_Mar_1.pdf)

Intellectual Property Disclosure Form
(http://www.mun.ca/research/about/IP_Disclosure_March_6.pdf)

Conflict of Interest Policy
(<http://www.mun.ca/policy/site/policy.php?id=180>)

Indirect Costs of Externally Funded Research
(<https://www.mun.ca/policy/site/policy.php?id=135>)

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